IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 974 of 2007
With
CIVIL APPLICATION No. 2744 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
RAMPRASAD GANGAPRASAD GUPTA & 2 - Defendant(s)

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Appearance :
MR HASMUKH THAKKER for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

On 15.8.2000 at about 10.00 PM, an accident took place between the truck insured by the appellant-Insurance Company and the tanker driven by respondent No.1 (original claimant). The collision resulted into serious damage to the tanker and also serious injuries to the driver of the tanker who was required to be rushed to the hospital at Ahmedabad. The claimant suffered compound comminuted fracture on the tibia and patella of the left leg. There was dislocation of the left toe including amputation and there was also fracture of radius in the left hand. On account of permanent disability of the left leg to the extent of 63% and permanent disability of 20% on the left hand, the claimant filed MAC Petition No.70 of 2001 for compensation of Rs.8 lakhs.

2. The Motor Accident Claims Tribunal, Baroda held that the accident was caused by the sole negligence of the truck driver and awarded total compensation of Rs.6,68,946/- with interest at the rate of 7.5% per annum from the date of the claim petition till realization under various heads as under:-

Rs.5,40,000/- for loss of future income;
Rs. 18,000/- for loss of past income for six months;
Rs. 25,000/- for pain, shock and suffering and loss of amenities of life;
Rs. 75,946/- for medical expenses and treatment;
Rs. 10,000/- for attendant charges, special diet and transportation charges;

Rs.6,68,946/- Total
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3. The Insurance Company of the truck is in appeal before us mainly on the ground that the Tribunal erred in attributing the entire responsibility for the accident to the truck driver and in not attributing any negligence to the claimant who was driving the tanker.

4. There is no dispute about the fact that the truck was proceeding from Tarapur to Bagodara (from south to north) and that the tanker was travelling in the opposite direction i.e. from Bagodara to Tarapur (from north to south). There is also no dispute about the fact, as evidenced by the panchnama at Exh.23, that the tanker was on the correct side of the road and that the truck had gone over the wrong side.

5. The learned counsel for the appellant-Insurance Company for the truck would submit that it was even the case of the claimant-tanker driver that

on account of the repair works being carried on, some iron drums were placed on the road as a barricade on one part of the road and, therefore, the truck driver was required to move beside the drums necessitating the truck driver to take the truck on the incorrect side of the road. It is vehemently submitted that in view of this situation, it was as much the duty of the tanker driver to allow the truck to pass and that, therefore, some degree of negligence ought to have been attributed to the tanker driver.

6. We have carefully considered the submissions made by the learned counsel for the appellant-Insurance Company. Having gone through the judgment under appeal and the relevant extract of the panchnama at Exh.23 and also perusing the sketch produced by the learned counsel for the respondent-claimant, it is very clear that the tanker was not only on its correct side of the 30 feet road, but it was very close to the eastern edge of the road i.e. the correct side for the tanker with the distance of only two ft. between the left front wheel of the tanker and the edge of the road and distance of only four-and-a-half ft. between the left rear wheel of the tanker and the edge of the road on the correct side. It would thus appear that the claimant-tanker driver had done his utmost to swerve the tanker to the further left on seeing the oncoming truck, but the truck was being driven at such excessive speed that the truck driver could not stop the truck and it rammed into the tanker causing extensive damage to

the right side front portion of the tanker and in the process also caused serious injuries to the tanker driver i.e. the claimant in the claim petition. Since the drum barricade was on the western side of the road, i.e. the portion of the road on which the truck was being driven, it was for the truck driver to stop the truck dead before the drum barricade and to allow the tanker to pass on the tanker's correct side. Instead of doing that the truck driver went over the wrong side and rammed into the tanker. We, therefore, do not find any fault with the finding of the Tribunal that the accident was caused by the sole negligence of the truck driver.

7. Coming to the question of quantum of compensation, the Tribunal assessed the income of the claimant at Rs.3,000/- per month and having regard to the permanent disablement to the extent of 63% on the left leg and 20% on the left hand, the Tribunal rightly held that the claimant had suffered 100% functional disability and on that basis computed the loss of future income at Rs.3000 X 12 X 15 = Rs.5,40,000/-. The claimant- tanker driver was 32 years on the date of the accident. Therefore, adoption of multiplier of 15 years was also not on the higher side.

8. The learned counsel for the appellant-Insurance Company would, however, urge that since the owner of the tanker had himself stated that he was paying the tanker driver salary of Rs.2100/- per

month, the Tribunal erred in assessing the income at Rs.3,000/- per month.

9. Having regard to the fact that the claimant was driving a commercial vehicle like tanker and aged only 32 years on the date of the accident, the Tribunal committed no error in taking the datum figure of Rs.3,000/- per month which could as well be considered as the prospective future income of the claimant-tanker driver.

10. In view of the above discussion, we do not find any merit in this appeal. The appeal is, therefore, summarily dismissed.

The amount deposited by the appellant before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

11. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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